IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 8694 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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Versus

STATE OF GUJARAT

Appearance:

1. Criminal Misc.Application No. 8694 of 2001

MR JB PARDIWALA FOR MR KB ANANDJIWALA for Petitioners

MR KC SHAH APP for Respondent No. 1

MR YOGESH S LAKHANI for Respondent No. 2

CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 02/08/2002

C.A.V. JUDGEMENT

1. Rule. Mr. K.C. Shah, learned APP appears and

waives the service of notice of rule on behalf of respondent No.1 whereas Mr. Yogesh Lakhani, learned advocate appears and waives the service of notice of rule on behalf of respondent No.2.

2. By means of filing this petition under Section 482 of the Code of Criminal Procedure, 1973 ('the Code' for short), petitioners who are Police Officials at the relevant time serving in District Kachchh at Bhuj, have prayed to quash and set aside the Criminal Complaint bearing Inquiry Case No.72 of 1999 arising out of M. Case No.21 of 1999 of Bhuj Town Police Station and also prayed to quash and set aside the judgment and order dated October 11, 2001 passed in Criminal Revision Petition No.2 of 2001 by the learned Sessions Judge, Kachchh at Bhuj and also the order dated December 30, 2000 passed in M. Case No.21 of 1999 (Criminal Inquiry No.72 of 1999) by the Judicial Magistrate, First Class, Kachchh at Bhuj rejecting "C" Summary report filed by the investigating officer and taking cognizance of offence u/s. 306 and 114 of the Indian Penal Code ('IPC' for short) against the petitioners.

3. The brief facts giving rise to this petition are as under:

3.1.(a) Petitioner No.1 is serving as Deputy Superintendent of Police, Head Quarters, Kachchh. At present he is in charge of the Communal Cell (Administration). His duty is to look after the entire Head Quarters.

3.1.(b) Petitioner No.2 is a residential Sub Inspector. He is in charge of the Head Quarters for the following categories:
(i) Parade,
(ii) Mess,
(iii) Mountain Dog Squad,
(iv) Camel Squad,
(v) Armour Branch,
(vi) Band Branch, and
(vii) Writer Head Branch.

3.1.(c) Petitioner No.3 is a Head Cook at the Head Quarters. Two persons work under him. He was working under Mess Commander, i.e., the deceased. His main job is to take raw material from the deceased and to prepare food. His duty is to serve all new recruits and persons without family.

3.1.(d) Petitioner No.4 is a Mess Cook. His job is to

prepare food and was working under Mess Commander i.e., the deceased.

3.2. The deceased was appointed as Mess Commander at the Head Quarters on August 14, 1999. His duty was to look after the kitchen and maintain all accounts regarding the same. The keys of the store used to remain with the deceased.

3.3. On September 10, 1999 the deceased without informing any one surreptitiously eloped from the Head Quarters and did not report for duty. On September 20, 1999 the deceased consumed Baygon Spray, a highly poisonous insecticide, and on September 22, 1999 passed away. On September 28, 1999 respondent No.2 complainant who happens to be the brother of the deceased filed a private complaint in the Court of Chief Judicial Magistrate, Kachchh at Bhuj alleging that the accused persons (petitioners) in collusion with each other have committed offence of abetting the commission of suicide by the deceased thereby committed offence punishable u/s. 306, 114 read with Section 120-B of the IPC.

3.4.(a) In the complaint it is alleged that his brother i.e., the deceased was serving as a Mess Manager and Writer Head at the Police Head Quarters under the direct supervision of the District Superintendent of Police. According to the complainant, the deceased was a very honest, sincere and man of principles. Though he was in charge of the Mess Canteen he was not handed over the charge of godown, office and the keys of the godown and office were also not given to the deceased, but only the keys of store room used to remain with the deceased. It is alleged that time and again incidents of irregularities, mismanagement concerning the mess used to be reported and to prevent such irregularities and mismanagement the deceased used to always inform petitioner No.1. It is said that the deceased used to always complain to petitioner No.1 about the misdeeds committed by petitioner Nos.2, 3 and 4 but every time petitioner No.1 used to avoid the deceased and always favoured petitioner Nos.2, 3 and 4. In order to see that the deceased lands up in some sort of trouble or problem, petitioner Nos.2, 3 and 4 used to spread rumours that the quality of food was not upto the mark and that many insects were to be seen in the good and not only that, sometimes the faecal matter of rats also was found in the food. Such rumours were being spread by petitioner Nos.2, 3 and 4 as a part of the conspiracy hatched by them and thereby gave mental torture to the deceased. It is further alleged that petitioner Nos.2, 3 and 4 started

discussing in the Head Quarters with the other officials saying that the deceased was a very irresponsible person, that he was very incompetent, etc. In connection with this matter also the deceased had drawn attention of petitioner No.1.

3.4.(b) It is further alleged in the complaint that allegations of irregularities in the buying of kerosene and mismanagement of canteen were also levelled against the deceased. Petitioner Nos.2, 3 and 4 also declared that some quota of food grains are also stolen. About 5 to 6 days before the date of incident, petitioner No.1 was forced to visit the Head Quarters and instead of reprimanding the behaviour of petitioner Nos.2, 3 and 4, petitioner No.1 is said to have run down the deceased by making a fool of the deceased. It is further alleged that the accused is said to have told the deceased that the world does not need the people like him but only Angels and Gods require people like him and therefore he should proceed towards heaven where his values and virtues will be appreciated. All these bickerings of the accused took its toll on the mental state of the deceased which affected the deceased very badly and is said to have gone under acute mental depression. The deceased had also tried to contact the District Superintendent of Police to complain about the harassment at the end of the petitioners but somehow was not able to convene a meeting with him. Ultimately, with a view to put an end to his life on account of instigation and provocation at the end of the accused persons, the deceased all of a sudden was reported lost from September 13, 1999. It is also stated in the complaint that on September 15, 1999 one written complaint was lodged with the District Superintendent of Police against the petitioners. The father of the deceased wrote a letter dated September 23, 1999 to the District Superintendent of Police saying that petitioner No.1 was not inquiring into the matter impartially and therefore the inquiry be handed over to some impartial police officer. On September 20, 1999 deceased returned to Bhuj and had a talk with the complainant in the last meeting just five minutes before, between the brothers. In the said meeting with the brother, the deceased informed that on September 20, 1999 at 8.30 morning, on account of instigation, provocation and mental torture at the end of the petitioners, the deceased had consumed poisonous insecticide "Baygon" and on saying so he fell down. Immediately the deceased was shifted to G.K.General Hospital, Bhuj and thereafter was shifted to Civil Hospital, Ahmedabad, where he was treated as an indoor patient. It is also stated that on September 22, 1999 the Executive Magistrate, recorded the dying

declaration of the deceased.

3.5. On September 22, 1999, at 10 P.M. deceased breathed his last. Postmortem of the deceased was also performed. Therefore, it is alleged in the complaint that all the petitioners in pursuance of the criminal conspiracy hatched meted out lot of harassment towards the deceased mentally and because of the same the deceased went into acute mental depression and ultimately committed suicide. Complainant alleged that all the petitioners have committed offences punishable u/s. 306 read with section 120-B and 114 of the IPC.

3.6. On September 28, 1999 the Chief Judicial Magistrate, Kachchh at Bhuj passed an order below the complaint of the complainant that the complaint be sent for police investigation u/s. 156 (3) of the Code.

3.7. At the end of the investigation, the police filed its report before the Chief Judicial Magistrate, Kachchh at Bhuj praying for 'C' summary. According to the police report, no offence was committed by the petitioners and there was no credible material against the petitioners to charge sheet them and put them to trial. The Chief Judicial Magistrate, Kachchh at Bhuj, vide order dated May 25, 2000 accepted the "C" summary report of the investigating agency and refused to take cognizance.

3.8. The complainant feeling aggrieved by the order of the Chief Judicial Magistrate accepting the "C" summary report placed by the police and refusing to take cognizance approached this Court by way of Criminal Revision Application No.227 of 2000. The complainant's main grievance before this Court was that the Chief Judicial Magistrate should not have accepted the "C" summary report and should have taken cognizance u/s. 190 (1) (b) of the Code by rejecting the "C" summary report. This Court disposed of Criminal Revision Application No.227 of 2000 by giving suitable directions whereby the Sessions Judge, Kachchh at Bhuj was directed to withdraw the Inquiry Case No.72 of 1999 relating to M.Case No. 21 of 1999 of Bhuj City Police station which was pending on the file of the Chief Judicial Magistrate and transfer the same to a Magistrate other than the Magistrate who passed the order. This Court further directed that the Magistrate shall afford full opportunity of being heard to all the necessary parties and decide afresh keeping in mind the legal settled principle of law with regard to taking of cognizance in the matter. In short, the revision application was virtually allowed as if the order of the Chief Judicial Magistrate accepting the "C"

summary report was quashed and set aside.

3.9. Pursuant to the order passed by this Court in the above referred to Criminal Revision Application, Judicial Magistrate, First Class, Kachchh at Bhuj, once again issued fresh notices to all the parties concerned and after hearing all the parties i.e., the accused persons and the complainant including the State came to the conclusion that the "C" summary report filed by Investigating Agency deserves to be rejected and there was prima facie evidence on the basis of which cognizance can be taken under Section 190 (1) (b) of the Code against the accused persons. Accordingly, vide order dated December 30, 2000, Judicial Magistrate, First Class, Bhuj, passed an order refusing to grant "C" summary as prayed for by the investigating officer and passed an order for issuance of process against the accused persons for offences punishable u/s. 306 read with section 114 of the IPC. The learned Judicial Magistrate, First Class, refused to believe the case of conspiracy and accordingly did not issue any process for the offence u/s. 120-B of IPC. Non-bailable warrants were also ordered to be issued on payment of the process fee.

3.10. The petitioners being dissatisfied and aggrieved by the order of the learned Judicial Magistrate, First Class, Bhuj taking cognizance of the offences, approached the Court of Sessions, Kachchh at Bhuj by preferring Criminal Revision Application No.2 of 2001. The learned Sessions Judge, Kachchh at Bhuj vide judgment and order dated October 11, 2001 dismissed the revision application of the petitioners confirming the order of the learned 3rd Joint Judicial Magistrate, First Class rejecting the "C" summary report and taking cognizance of the offences.

4. These two orders, one passed by the learned Magistrate and another by the learned Sessions Judge by which the order of the learned Magistrate is confirmed, have given rise to the present petition at the instance of the petitioners/accused, seeking relief in exercise of extraordinary powers conferred u/s. 482 of the Code for quashing the said complaint.

5. Mr. J.B. Pardiwala, learned counsel for the petitioners, contended that on a plain reading of the complaint, by no stretch of imagination it can be said that necessary ingredients to constitute offence of abetment as defined u/s. 306 of IPC are borne out as the complaint does not disclose the commission of the said offence. It is also asserted by the learned counsel that

considering the nature of allegations levelled in the complaint and also taking the statements of the witnesses at their face value, it cannot be said by any stretch of imagination that the petitioners/accused in some manner or other abetted the commission of suicide by the deceased. In support of the aforesaid contention, he has also referred to sections 306 and 107 of the IPC and tried to point out that in order to make out the offence of abetment of suicide, necessary proof required is that the culprit has either instigated the victim to commit suicide or has engaged himself in conspiracy with others, for the commission of suicide or has intentionally aided, by any act or illegal commission in the commission of suicide. It is also claimed by the learned counsel that so far as the offence u/s. 306 of IPC about abetment to commit suicide is concerned, there should be dependable evidence with regard to actual abetment by the accused. If the dependable evidence is not there the accused will be entitled to acquittal. It is also emphasized by the learned counsel that if the allegations levelled in the complaint are accepted as true, even then it cannot be said that it is the instigation or provocation of the petitioners that led the deceased to commit suicide. To constitute an offence u/s. 306 of IPC the most essential ingredient is that there must be prima facie evidence to even remotely suggest that the accused persons intended the consequences of the act i.e., death of the person. It is also claimed by the learned counsel that practically 90% of the findings recorded by the learned Magistrate are in favour of the petitioners but solely on the fact that there are dying declarations wherein it has been stated that the deceased used to complain to his superiors about the mismanagement committed by persons working under him in the mess canteen and because of their high influence the petitioners were refusing to listen to the deceased and were harassing the deceased and therefore the deceased was gripped under tension and consumed Baygon Spray, decided to reject the "C" summary report and issued process, which on the face of it is erroneous as there is no iota of evidence from which it could be inferred that there was any abetment so as to bring the acts of the petitioners within the scope of section 306 of IPC under which the petitioners are sought to be prosecuted. The learned counsel further emphasized that the dying declaration, per se, even if accepted as true without challenging the veracity of the same could not involve the petitioners in the offence punishable u/s. 306 of IPC because it provides for abetment of suicide.

6. In support of the aforesaid contention and more

particularly to canvass the proposition that the act of the petitioners does not constitute the offence of abetment to suicide, learned counsel placed reliance on the following reported decisions:

(i) Sanju alias Sanjay Singh Sengar v. State of Madhya Pradesh, 2002 AIR SCW 2035 (SC)
(ii) Ramesh Kumar v. State of Chhattisgarh, (2001) 9 SCC 618 (SC)
(iii) Mahendra Singh and another v. State of MP, 1995 SCC (Cri.) 1157 (SC)
(iv) State of Gujarat v, Pradyuman Ramanlal Mehta and others, 1999 Cri.L.J. 736 (Gujarat High Court).

7. So far as maintainability of the petition is concerned, according to the learned counsel, after rejection of the revision by the Sessions Judge if the petitioners prefer petition under section 482 of the Code it is maintainable if it is established that the orders which are impugned in the petition are leading to miscarriage of justice.

8. In support of the aforesaid contention, the learned counsel relied upon following reported decisions:

(i) Krishnan & another v. Krishnaveni & Another, 1997 (1) Supreme 628 (SC) and
(ii) Jagdishbhai Dharamsi Thakore v. State of Gujarat, 1972 (2) GLR 1553 (Gujarat High Court).

9. On the aforesaid premises, it is urged by the learned counsel that the petition is maintainable and there is absolutely no evidence worth suggesting that there was any abetment to commit suicide on the part of the petitioners and therefore he urged to allow this petition by granting the prayers made therein.

10. Mr. Y.S. Lakhani, learned counsel for respondent No.2 - complainant contended that the impugned orders are justified in the facts and circumstances of the case and do not call for interference by this Court in exercise of its powers under section 482 of the Code for quashing the complaint whereunder after having applied judicial mind the learned Magistrate has issued process on the basis of the two dying declarations, one before the Executive Magistrate and another before the complainant which has been subsequently reduced into writing on the basis of the narration made in the written complaint made before the learned Judicial Magistrate, First Class. The learned counsel has also raised preliminary objection to the fact that the order of the

learned Magistrate dated December 30, 2000 was challenged by the petitioners by way of revision which has been rejected by the learned Sessions Judge, Kachchh at Bhuj and therefore second revision invoking inherent powers vested under section 482 of the Code by this Court is not maintainable when earlier revision petition filed under Section 397 of the Code seeking the same relief before the learned Sessions Judge has been dismissed as the inherent powers of the High Court cannot be utilized as a substitute for second revision.

11. In support of the aforesaid contention, the learned advocate relied upon the following reported decisions:

(i) Ganesh Narayan Begde v. S. Bangarappa and others, 1996 (1) GCD 310 (SC)
(ii) Rajinder Prasad v. Bashir and others, AIR 2001 SC 3524
(iii) Rajathi v. C. Ganesan, (1999) 6 SCC 326 (SC) and
(iv) Dharampal and others v. Smt. Ramshri and others, AIR 1993 SC 1361 (SC).

12. So far as the merit of the matter is concerned, according to the learned counsel, the petitioners have not made out any case for quashment of the said complaint whereunder process came to be issued on the basis of the two dying declarations, one made before the Executive Magistrate and another before the brother of the deceased who filed complaint before the learned Magistrate. According to the learned counsel, it is settled principles of law that quashing of proceeding by High Court before the veracity of the dying declarations is tested at the trial is not permissible. It is also claimed by the learned counsel that the veracity of the dying declarations should not be tested without recording the evidence and therefore this is not the stage where the complaint and the process issued thereunder at pretrial stage can be quashed.

13. In support of the aforesaid contention, the learned advocate has relied upon the following reported decisions:

(i) State of Orissa v. Bansidhar Singh, AIR 1996 SC 938 (SC), and
(ii) State of Haryana v. Surinder Kumar (2000) 10 SCC 337 (SC).

14. On the aforesaid premises, the learned advocate

urged that there is no substance in the challenge made to these two orders and prayers made by the petitioners for quashment of the complaint and therefore the petition deserves to be rejected and same may be rejected.

15. Mr. K.C. Shah, learned A.P.P. for respondent No.1, State of Gujarat, has supported both the orders, one passed by the learned Magistrate and another by the learned Sessions Judge by which the order passed by the learned Magistrate is confirmed by which the process came to be issued against the petitioners for commission of the alleged offence u/s. 306 of the IPC and therefore in exercise of the powers conferred u/s. 482 of the Code this Court should not interfere with both the orders as well as the process issued thereunder and therefore he prayed to reject the petition.

16. I have considered the submissions advanced by the learned advocates appearing for the parties. I have also perused the averments made in the memo of petition, grounds set out therein and all the orders annexed with the petition and the judgments cited at the bar.

17. Since Mr. Lakhani, learned counsel for respondent No.2 has raised preliminary objection regarding maintainability of the petition in exercise of powers under Section 482 of the Code, it has become necessary for this Court first to deal with the said contention about the maintainability of petition.

18. It has been vociferously contended by Mr. Lakhani, learned counsel for respondent No.2 that this petition of the petitioners invoking inherent powers of this Court under Section 482 of the Code is not maintainable as it tantamountly amounts to second revision which is barred under Section 397 (3) of the Code. The sum and substance of the contention is that against the order of the learned Magistrate rejecting the "C" summary report and ordering issuance of process and taking cognizance of the offence, the petitioners had approached the Court of Sessions by way of a revision application which was rejected by the Sessions Judge and therefore this petition in the form of Criminal Misc. Application u/s. 482 of the Code is not maintainable. According to me, this contention of Mr. Lakhani is devoid of any merit. The law on this subject is no more res integra as there is no absolute or blanket bar for entertaining the petition of the present nature despite the fact that the petitioners have exhausted the remedy of revision before the Sessions Court. In the facts and circumstances of the case and after appreciating all the

contentions raised by the accused persons if this court is of the opinion that the impugned orders if allowed to stand would lead to grave miscarriage of justice or abuse of process of the court then this Court would be fully justified to exercise inherent powers under section 482 of the Code.

19. In this connection, it would be appropriate to refer to the judgment in Krishnan's case (supra) relied upon by Mr. Pardiwala, learned counsel for the petitioners. In the said judgment the Supreme Court has observed as under:

> "Ordinarily, when revision has been barred by Section 397 (3) of the Code, a person-accused/ complainant cannot be allowed to take recourse to the revision to the High Court under section 397 (1) or under inherent powers of the High Court under Section 482 of the Code since it may amount to circumvention of the provisions of Section 397 (3) or Section 397 (2) of the Code. It is seen that the High Court has suo motu power under Section 401 and continuous supervisory jurisdiction under Section 483 of the Code. So, when the High Court on examination of the record finds that there is grave miscarriage of justice or abuse of process of the courts or the required statutory procedure has not been complied with or there is failure of justice or order passed or sentence imposed by the Magistrate requires correction, it is but the duty of the High Court to have it corrected at the inception lest grave miscarriage of justice would ensue. It is, therefore, to meet the ends of justice or to prevent abuse of the process that the High Court is preserved with inherent power and would be justified under such circumstances, to exercise the inherent power and in an appropriate case even revisional power under Section 397 (1) read with Section 401 of the Code."

20. So far as the judgments in the cases of Ganesh Narayan Hedge (supra), Rajinder Prasad (supra), Rajathi (supra) and Dharampal (supra) relied upon by Mr. Lakhani, learned advocate for respondent No.2 are concerned, it is true that the Supreme Court has said that petition invoking inherent powers under Section 482 of the Code cannot be entertained when earlier revision petition filed under Section 397 of the Code seeking same relief is dismissed. Those judgments rested on the facts of those cases. The Supreme Court has not laid down

absolute bar so far as maintainability of the petition under Section 482 of the Code. Besides this, all the aforesaid decisions of the Supreme Court relied upon by Mr. Lakhani have been decided by two Judge Bench of the Supreme Court whereas the judgment in Krishnan's case (supra) is decided by three Judge Bench of the Supreme Court and in the said judgment the Supreme Court has unequivocally ruled that any revision before the High Court under sub-section (1) of Section 397 of the Code is prohibited by sub-section (3) of Section 397 of the Code but inherent powers of the High Court under Section 482 of the Code is justified and, therefore, this Court is justified in interfering with the judgment leading to miscarriage of justice. However, it is also cautioned that the said powers be exercised sparingly so as to avoid needless multiplicity of proceedings and unnecessary delay in the trial and protraction of proceedings. The judgment in Krishnan's case (supra) has been followed by this Court in the case of Jagdishbhai Dharamshi Thakore (supra).

21. In view of the aforesaid discussion and more particularly relying upon the judgment in Krishnan's case (supra) which is followed by this Court in Jagdishbhai Dharamshi Thakore's case (supra), at the cost of repetition be it stated that there is no absolute or blanket bar in entertaining the petition despite the fact that the petitioners have exhausted the remedy of revision before the Sessions Court and more particularly if the impugned orders are allowed to stand would amount to miscarriage of justice and abuse of process of court and, therefore, the preliminary objection raised by Mr. Lakhani is rejected and it is held that the petition is maintainable in exercise of powers conferred under Section 482 of the Code.

22. Now after having held that this petition filed under Section 482 of the Code is maintainable, the next question which falls for determination of this Court is as to whether the Judicial Magistrate, First Class, at Bhuj is justified in rejecting the "C" summary report submitted by the investigating officer and issuing process observing that prima facie case is made out against the petitioners and whether the Sessions Judge in exercise of revisional powers is justified in confirming the order of the learned Magistrate taking cognizance and rejecting the "C" summary report?

23. To answer the above referred to issue, it would be just and proper to frame the following questions:

(i) Whether plain reading of the complaint as a whole constitutes any offence of abetment punishable u/s. 306 of IPC?

(ii) Taking the allegations at their face value and the other surrounding circumstances, can it be said that the accused persons directly or indirectly abetted the commission of suicide by the deceased?

(iii) In view of the allegations made in the complaint and the evidence collected by the Investigating Agency including the dying declarations of the deceased can it be said that the accused persons aided or instigated the deceased to commit suicide or can it be said that cruelty and harassment even if believed was with the intention to force the deceased to commit suicide?

(iv) Taking the dying declarations as a piece of evidence and reading them as a whole without challenging the veracity of the same, whether it can be said that on account of instigation or aiding or harassment the deceased committed suicide?

(v) Whether the learned Magistrate can be said to have issued process mechanically on basis of complaint without considering relevant facts and circumstances and whether the revisional court exercising revisional powers while examining the legality and validity of the order passed by the Magistrate has considered all relevant aspects before endorsing the order of the Magistrate?

(vi) Whether continuation of the prosecution in the facts and circumstance of the case will amount to abuse of process of law and miscarriage of justice?

24. Before answering the questions referred to above, it would be advantageous to reproduce verbatim English translation from vernacular of the dying declaration dated September 22, 1999 made by the deceased before the Executive Magistrate at Civil Hospital, Ward C/8, Bed No.41.

"1. What is your name? Shamsuddin
2. What is your father's
Name? Mohammad Shariff
3. Age 38
4. Incident occurred where, at what time and
at which place: Incident occurred on
20.9.1999 at 8.45 at my
residence.

5. Inform about the incident in short:
I am serving at Bhuj Head quarter as a mess manager and four persons are working under me in which (1) Krishnaram Hariram (2) Bhikaram Gomdaram use to do some golmal in the ration and despite complaining about the same to the superior authorities nobody use to listen to me as they use to give haptas to the superiors and amongst the superiors (1) Muniasaheb Dy.S.P. (2) Patram Yadav RSI use to harass me on account of which I came under tension and I have consumed Baygon spray.
6. Were you being harassed by someone: The harassment was at the end of the above named persons.
7. Do you want to say anything more: No."

25. This is the written dying declaration before the Executive Magistrate made by the deceased. So far as the second dying declaration is concerned, it was made by the deceased before the complainant who is the brother of the deceased and on the basis of the same the complainant has filed complaint before the learned Magistrate at Bhuj to which reference is made at the beginning of this judgment.

26. On over all analysis of both the dying declarations and order dated December 30, 2000 recorded by the learned Judicial Magistrate, First Class, Bhuj, it would be pertinent to draw a picture which emerges from a cumulative reading and assessment of the material available which are as under:

(i) As per the complainant himself the deceased was a very emotional and a sentimental human being.
(ii) Deceased appeared to be absolutely disappointed, frustrated and depressed.
(iii) Deceased was in some sort of tension on account of pressure of work.
(iv) Deceased was afraid of being defamed because of certain flimsy allegations which were being allegedly levelled against him by the accused persons.
(v) It has been observed in para 7 at page 51 of the order passed by the learned Judicial Magistrate, First Class that the deceased had made a dying declaration before the Executive Magistrate and has named the four accused persons in the dying declaration but what sort of harassment and in what manner he was being harassed by the accused persons has not been stated anywhere in the dying

declaration.

(vi) It has been observed in para 10 at page 54 that sometime before the deceased committed suicide he had left the head quarters and was not on duty. It is further observed that the deceased had addressed an application to the DSP in the form of complaint regarding mismanagement in the mess canteen. It is further observed that the DSP had directed ASP Bhuj to inquire and investigate into the allegations levelled in the application preferred by the deceased and in a confidential report filed by ASP before the DSP it has been said that the allegations in the application made by the deceased were baseless and not at all well founded.

(vii) The learned Judicial Magistrate First Class in para 10 at page 56 has observed that there is no case for issuing process for the offence of criminal conspiracy punishable u/s. 120-B of the IPC. It has been observed in para 10 at page 54 that in the application addressed to the DSP by the deceased in the form of a complaint the deceased had stated that he has not made certain entries of accounts of mess canteen and that because of 2-3 jobs to be performed he was in lot of tension.

(viii) It has been observed in para 10 at page 55 by the learned JMFC that if the application of the deceased is read and taken into consideration then it has been stated that the employees of the mess were trying to defame him but in the said application he has not levelled any personal allegations against the Dy.S.P. i.e., petitioner No.1 or against any of the employees of the mess. However, in the dying declaration the deceased has said about mental cruelty on account of which the deceased was feeling frustrated and exhausted.

(ix) It has been observed in para 10 at page 55 that the allegations which have been levelled by deceased and the complainant about deceased being defamed is not being supported by the statements of the recruits who had completed the training and which were recorded during the course of the investigation.

(x) It has been observed in para 10 at page 56 that the brother of the deceased i.e., the complainant in his statement dated September 20, 1999 before the ASI Bhuj City has stated that it was told by his brother i.e., the deceased that on account of mental harassment and threats of being suspended

from the job he consumed Baygon insecticide.

27. It is pertinent to note that 90% of the findings recorded by the learned JMFC in his order are in favour of the petitioners but solely on the fact that the deceased used to complain to his superiors about the mismanagement committed by persons working under him in the mess canteen and because of their high influence the accused persons were refusing to listen to him and were harassing him and, therefore, he was gripped under tension and consumed baygon spray, decided to reject the "C"summary report and issue process.

28. Judgments in the case of State of Orissa v. Bansidhar Singh (supra) and State of Haryana v. Surinder Kumar (supra) relied upon by the learned counsel Mr. Lakhani to canvass the proposition with regard to the powers of the High Court in the matter of quashing of FIR and also the proposition that the veracity of the dying declaration should not be tested without recording the evidence rested on the facts of those cases before the Supreme Court and, therefore, the ratio laid down in those two judgments are not made applicable to the facts of the present case.

29. The Supreme Court in Sanju alias Sanjay Singh Sengar's case (supra) has held that accused telling deceased 'to go and die' that itself would not constitute ingredient of 'instigation'. Presence of means rea is necessary concomitant of instigation. The fact that deceased committed suicide after two days of quarrel during which said words were uttered by accused would show that suicide was not direct result of quarrel and, therefore, ultimately it is held that the charge-sheet framed under Section 306 of IPC against accused was liable to be quashed as ingredients of abetment were totally absent.

30. The Supreme Court in Ramesh Kumar's case (supra) has held that there must be a reasonable certainty to incite the consequence. Merely because accused is found guilty u/s. 498-A he should not necessarily be held to be guilty under section 306 of IPC on the basis of the same evidence.

31. In Mahendra Singh's case (supra), the Supreme Court has observed that dying declaration of the deceased wife alone is not sufficient to bring the acts of the appellants husband, mother-in-law and sister-in-law of the deceased within section 306 of IPC and conviction for abetment of suicide merely on the allegation of

harassment to the deceased is not sustainable.

32. In the case of State of Gujarat (supra), this Court has held that publication of defamatory article against victim cannot be attributed to an intention to illegally aiding or instigating suicide by person concerned.

33. Applying the principles laid down by the Supreme Court in the judgments referred to above and the evidence in the nature of two dying declarations which have been discussed at length in the foregoing paragraphs, there is no hesitation in holding that as superior officers at times the juniors are reprimanded for their lapse or dereliction of duty, but that does not mean that the person who is reprimanded if feels bad and commits suicide the superior is to be punished for abetment. Many times teachers reprimand a student for not being attentive in the class or not being upto the mark in studies and for any reason if a student is mentally weak or say very emotional or sentimental commits suicide, the teacher cannot be held liable for the same. Police department is a symbol of discipline. As a part of disciplinary measures even if the deceased is told something or for any reason even if there is any talk in the head quarter about mismanagement of the mess for the quality of food that by itself is not sufficient to draw an inference that the same was with the intention to harass the deceased and lead him to commission of suicide, and therefore, continuation of prosecution of the petitioners who are police officials will amount to abuse of process of law and will lead to serious miscarriage of justice. Judicial process should not be an instrument of oppression or needless harassment. The court should be circumspect and judicious in exercising discretion and should take all the relevant facts and circumstances into consideration before issuing process lest it would be an instrument in the hands of private complainant as vendetta to harass the person needlessly. In the present case the complaint on the basis of which the process has been issued can be said to be filed as vendetta to harass the accused persons needlessly and, therefore, both the impugned orders deserve to be quashed and set aside and the accused persons be discharged from the prosecution in exercise of powers conferred under Section 482 of the Code by quashing Criminal Complaint being Inquiry Case No.72 of 1999 arising out of M.Case No.21 of 1999 at Bhuj City Police station and hence the petition deserves to be allowed.

34. For the foregoing reasons, the petition succeeds

and accordingly it is allowed. Criminal Complaint being Inquiry Case No.72 of 1999 arising out of M. Case No.21 of 1999 of Bhuj City Police station is hereby quashed and set aside and both the impugned orders recorded by the learned Judicial Magistrate, First Class, Bhuj and the Sessions Judge, Kachchh at Bhuj are also quashed and set aside. Rule is made absolute.

(A.M. Kapadia, J.)

(karan)